

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE
WHOLESALE PRICE LITIGATION

THIS DOCUMENT RELATES TO:

COUNTY OF SUFFOLK,

Plaintiff,

v.

ABBOTT LABORATORIES, INC., AGOURON
PHARMACEUTICALS, INC., AMGEN, INC.,
ASTRAZENECA PHARMACEUTICALS L.P.,
ASTRAZENECA US, AVENTIS BEHRING,
AVENTIS PHARMACEUTICALS INC., BARR
LABORATORIES, INC., BAYER AG, BERLEX
LABORATORIES, INC., BIOGEN, INC., BRISTOL
MYERS SQUIBB COMPANY, ELI LILLY AND
COMPANY, FUJISAWA PHARMACEUTICAL
COMPANY, LTD., GENENTECH, INC., GLAXO
WELLCOME, P.L.C., GLAXOSMITHKLINE PLC,
IMMUNEX CORPORATION, IVAX
CORPORATION, IVAX PHARMACEUTICALS
INC., JANSSEN PHARMACEUTICAL, JOHNSON &
JOHNSON, MEDIMMUNE, INC., MERCK & CO.,
INC., NOVARTIS PHARMACEUTICALS
CORPORATION, ORTHO BIOTECH, ORTHO
MCNEIL PHARMACEUTICALS, PFIZER INC.,
PHARMACIA CORPORATION, PURDUE
PHARMA, L.P., RELIANT PHARMACEUTICALS,
SANOFI-SYNTHELABO, INC., SCHERING-
PLOUGH CORP., SMITHKLINEBEECHAM P.L.C.,
TAP PHARMACEUTICALS, WARRICK
PHARMACEUTICALS, WYETH, AND DOES 1-100,

Defendants.

MDL NO. 1456
C.A. No. 01-CV-12257 (PBS)

HON. PATTI B. SARIS

Case No.

DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 9(b) and 12(b), the Defendants respectfully move this Court jointly for dismissal of all claims against them in the Amended Complaint. The grounds for this motion are stated in: (1) the Consolidated Memorandum in Support of Defendants' Motion to Dismiss, in which all Defendants join; and (2) individual memoranda of law filed by some Defendants, which they have submitted to address issues specific to them or issues which were not included in the Consolidated Memorandum. In accordance with the Court's Scheduling Order entered on July 20, 2003, defendants are filing a 40-page Consolidated Memorandum, and the individual memoranda filed by certain defendants do not exceed five pages. Defendants respectfully request that the Court hear oral argument on this motion.

WHEREFORE, for the reasons set forth in the memoranda described above, the Defendants respectfully request that the Court grant their motion to dismiss the claims against them in the Amended Complaint and enter an Order:

- a. dismissing all claims in the Amended Complaint with prejudice; and
- b. providing such other and further relief as the Court deems just and proper.

CONCLUSION

For all the above reasons, Suffolk County's Amended Complaint should be dismissed in its entirety.

Dated: Boston, Massachusetts
September 15, 2003

Respectfully submitted,
ON BEHALF OF ALL SERVED DEFENDANTS

By: Lucy Fowler
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CERTIFICATE OF SERVICE

I certify that on September 15, 2003, a true and correct copy of the foregoing Motion to Dismiss the Amended Complaint was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties.

Lucy Fowler
Lucy Fowler

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for defendants conferred with counsel for plaintiffs in an effort to resolve the dispute referred to in this motion, and that the parties have not been able to reach agreement with respect thereto.

Lucy Fowler
Lucy Fowler